

and, upon publication by the Regulator such orders shall have the same legal force as a rule;

- (s) on the initiative of the Regulator or upon request by another person, investigate complaints against licencees or other service providers, and conduct such other investigations as the Regulator deems necessary to ensure compliance with this Act, a regulation, rule or order, and issue an order in respect of anything prohibited, required or permitted to be done under this Act, a regulation, rule or order;
- (t) comply with the Code of Conduct detailed in section 19 of the Public Service Act 2004;
- (u) in exercising the Regulator's powers and performing duties under this Act, a regulation or rule, determine any question of law or fact, and despite any other law, the Regulator's determination on a question of fact is binding and conclusive for all purposes, including but not limited to any proceedings in any Court, tribunal or other adjudicative body; and
- (v) take such other actions as are reasonably required to carry out this Act, the regulations and rules, and to perform such other responsibilities, functions, and powers conferred on the Regulator under any other law.

(2) The Regulator shall carry out the responsibilities, functions and powers of the Regulator with a view to implementing the objectives set out in section 3 of this Act.

(3) The Regulator shall act independently in performing the responsibilities, functions and powers of the Regulator set out in this Act and other laws, and in this regard:

- (a) the Regulator shall act in a manner that is separate from, and not accountable to, any service provider, including a service provider owned by the Government;
- (b) the orders and rules made and the procedures used by the Regulator shall be impartial with respect to all service providers and other market

participants; provided however that nothing in this section shall be interpreted to prevent the Regulator from:

(i) consulting with any person or organization on any matter related to the Regulator's responsibilities, functions and powers; or

(ii) making a decision that is in accordance with this Act but that has a differential or prejudicial impact on a service provider or other market participant.

9. Office of the Regulator-(1) There is hereby established an Office of the Regulator, which shall function in accordance with this section.

(2) The Regulator shall be responsible for the management of the Office of the Regulator.

(3) The Office of the Regulator shall consist of the Regulator, the staff of the Office of the Regulator and employees and such other persons as may be seconded or appointed in accordance with this section.

(4) Except as provided in this Act, the Regulator and the Office of the Regulator shall function in accordance with the laws governing the public service and the finances of the Government of Samoa, and in particular:

(a) the staff and employees of the Office of the Regulator shall be appointed or employed under the Public Service Act 2004;

(b) the Public Service Commission shall appoint such staff and employees on the recommendation of the regulator; and

(c) the budget of the Office of the Regulator shall be approved pursuant to the national budgetary process for the Government taking into account any fees collected pursuant to a regulation made under sections 10(1) and (3).

(5) The Minister, acting on the advice of the Chief Executive Officer of the Ministry and of the Regulator, may by notice in writing:

- (a) designate one or more persons employed by the Ministry or other Ministries or Government organizations to work with the Office of the Regulator on a secondment basis. Such secondments may be part-time or full time, and shall last for such period of time as indicated in the notice; and
 - (b) determine that the Office of the Regulator may share or otherwise utilize support staff, office premises and other resources of the Ministry, or another Government organization.
- (6) A person who has been appointed or seconded to the Office of the Regulator and to whom the Regulator delegates a responsibility or function or power in writing, shall perform such of the responsibilities, functions and powers of the Regulator, as are specified in the delegation, and a delegation under this subsection may:
 - (a) authorize a person to make orders or issue licences;
 - (b) restrict the delegation to specific types of matters, or to a specific period of time;
 - (c) be subject to terms, conditions or restrictions; and
 - (d) be revoked by notice in writing.
- (7) In addition to the persons appointed or seconded to the Office of the Regulator under this section, the Regulator may appoint such consultants as may be necessary for the efficient performance of the functions of the Regulator.
- (8) all persons appointed or seconded under this section shall work under the direction of the Regulator in the discharge of their functions, powers and duties.
- (9) The Regulator shall conduct the affairs of the Office of the Regulator in an open and transparent manner. To this end, the Regulator shall, from time to time, publish or cause to be published, notices, rules and procedures governing the operation of the Office of the Regulator and the Office's dealings with the public.
- (10) The regulator shall cause the Office of the Regulator to establish an official web site to increase the transparency of the Office's affairs to persons inside and outside of Samoa.

(11) All rules, orders, notices and other important documents issued by the Office of the Regulator regarding the regulation of the telecommunications sector shall be posted on the Regulator's official web site, and published in any other media that the Regulator considers necessary or appropriate to provide adequate notice to interested persons.

(12) Within six months after June 30th of each year the Regulator shall cause the Office of the Regulator to prepare and provide to the Minister an annual report on the work of the Office of the Regulator, such report to include:

- (a) a summary of the activities of the Office of the Regulator;
- (b) financial statements and accounts and audit report on such statements and accounts (including the Universal Access Fund) in a form approved and audited by or under the direction and control of the Controller and Chief Auditor;
- (c) a list of licences in force and issued;
- (d) a list of interconnection agreements filed with the Regulator;
- (e) a summary of material litigation involving the Regulator;
- (f) a report on the Universal Access Fund;
- (g) a summary of rules and major orders made in the period since publication of the last annual report;
- (h) a description of major procurement and outsourcing activities undertaken by the Regulator;
- (i) a list of staff, employees and consultants appointed or seconded to the Office of the Regulator; and
- (j) such other information as the Minister may determine by notice in writing.

(13) The Minister shall table the annual report in the Parliament at the first available opportunity.

10. Licence, Radio Spectrum and Numbering Fees- (1)
The Regulator may propose a regulation to establish:

- (a) licence fees, including licence application fees and annual licence fees;
- (b) radio spectrum usage fees; and

(c) fees for the use of telecommunications numbers.

(2) The fees provided for in subsection (1) shall not come into effect until assent by the Head of State, acting on the advice of Cabinet, of a regulation establishing the fees and related payment and administration procedures.

(3) A regulation made under this section may provide that licence fees and fees for radio spectrum usage and telecommunications numbers shall be collected from all licensees taking into account the following principles.

(a) such fees may be used to fund, in whole or in part, the responsibilities, functions and powers of the Regulator and the operations of the Office of the Regulator under this Act and other laws;

(b) funding of the Regulator and the Office of the Regulator may be made indirectly, with fees payable in the first instance to the Treasury Fund, and then taken into account by the Ministry of Finance in funding the budget of the Regulator through the normal Government budgetary process;

(c) fees shall be levied on different licensees and users of spectrum and numbers in an impartial and competitively neutral manner; and

(d) licence fees may be based on a percentage of the revenues of licensees from the provision of their licenced telecommunications services.

(4) Fees required to be paid under this section constitute a debt due to the Government and may recovered in a court of competent jurisdiction.

11. Appeal and Review of Orders of the Regulator-(1) An appeal from an order of the Regulator may be made only:

(a) on any question of law; and

(b) to the Supreme Court with the leave of the Court.

(2) An application for leave to appeal shall be made within thirty days after the date of the order appealed from.

(3) An appeal shall be brought within sixty days after the day on which leave to appeal is granted.

(4) On an appeal under this section the Supreme Court may draw any inference that is not inconsistent with the findings of fact made in the order.

(5) Despite any other law, on hearing an appeal under this section the Supreme Court shall have only the jurisdiction and power to:

- (a) Determine the applicable law; and/or
- (b) Declare the order subject to appeal, or part of the order, to be lawful or unlawful; and/or
- (c) Remit the order to the Regulator for further determination by the Regulator in accordance with any determination and/or declaration made under paragraphs (a) and/or (b).

PART III

TELECOMMUNICATIONS LICENCES

12. Requirement to Hold Licence-(1) No person shall:

- (a) provide a telecommunications service to the public for direct or indirect compensation; or
- (b) own or operate a telecommunications network used to provide a telecommunications service to the public for direct or indirect compensation, except under and in accordance with a licence or an exemption order issued by the Regulator:

(2) For the purposes of this section:

- (a) the public includes persons in Samoa or elsewhere; and
- (b) the provision of telecommunications services to the public includes the provision or offering of such a service to any segment of the public, including the resale of telecommunications services obtained from another person, even if only one person is provided or offered such a service.

(3) All telecommunications services and telecommunications networks, other than those described in subsection (1), may be provided without a licence.

13. General Provisions Related to Licences-(1) Licences shall be issued by the Regulator, and shall be signed by the Regulator or a delegate of the Regulator to whom authority has been delegated under section 9.

(2) A licence is a unilateral grant of permission from the Regulator to provide a telecommunications service or operator a telecommunications network, and for all purposes it shall not be regarded as a contract or bilateral agreement.

(3) Licences shall be in writing, and the Regulator shall make copies of them available for inspection by the public.

(4) In all circumstances where a licence is required, the following shall be made publicly available by the Regulator:

(a) the applicable licensing procedures and licensing criteria; and

(b) the period of time normally required to reach a decision concerning an application for a licence.

(5) The reasons for denial of a licence shall be provided in writing by the Regulator to an applicant upon request.

(6) Licences for service providers that provide the same telecommunications services or own or operate the same telecommunications networks shall not unfairly discriminate between such licensees.

(7) The Regulator may issue licences under section (1) notwithstanding:

(a) any law, including but not limited to this Act, the Post Office Act 1972 and the Postal and Telecommunications Services Act 1999; or

(b) any agreement, contract, arrangement, licence or other provision in existence at the commencement date.

(8) Where:

(a) the Regulator has issued a licence under subsection (1); and

(b) the Attorney General and the Chief Executive Office of the Ministry of Finance have advised Cabinet in writing that the grant of such licence has adversely affected the rights of a party under an existing agreement, contract, arrangement, licence or other provision,

Cabinet, in its absolute discretion, may authorize the provision of compensation to such party in the form of money, concessions, benefits or otherwise in such amount and/or form as the Attorney General and the Chief Executive Officer of the Ministry of Finance in writing may recommend.

14. Exemption Orders-(1) The Regulator may issue an order (an “exemption order”) exempting specified activities or classes of persons from the requirement to hold a licence.

(2) An exemption order may be made subject to such conditions as the Regulator deems necessary and that are consistent with this Act; the regulations and rules.

15. Types of Licences-(1) The Regulator may issue two types of licences:

- (a) individual licences; and
- (b) class licences

(2) The rules shall specify which type of telecommunications services require individual licences and class licences. Until such a rule comes into force, the Regulator may issue an order prescribing which types of telecommunications services require individual licences and class licences.

16. Licensing Procedures-(1) The procedures for issuing licence shall be fair and objective.

- (2) The procedures and criteria for issuing licences shall be:
- (a) published in Samoan and English in the Savali and one other newspaper circulating in Samoa; and
 - (b) posted on the Regulator’s official web site.

17. Licence Conditions-(1) The Regulator shall establish the conditions of all licences.

(2) Licence conditions shall be kept to a minimum and used only where rules of general application cannot adequately provide regulatory controls that the Regulator considers necessary to implement this Act.

18. Amendment and Revocation of Licences-(1) The Regulator may amend or revoke a licence if:

- (a) the amendment or revocation has been requested or agreed to by the licensee;
- (b) the licensee has been in breach of a material licence condition or this Act or a regulation, rule or order made under this Act;
- (c) changes to international treaties, commitments, recommendations, standards or the laws of Samoa require an amendment or a revocation; or
- (d) the Regulator decides that the amendment or revocation is required to implement this Act in a manner consistent with the objectives listed in section 3.

(2) Prior to amendment or revocation of a licence pursuant to this section, the Regulator shall notify the licensee in writing that the Regulator is considering the relevant action, and shall consider any comments made by the licensee in a timely manner.

(3) Notice under subsection (2):

- (a) shall give the licensee at least 14 days from service of the notice to prepare comments on the relevant actions;
- (b) shall set out any procedures the Regulator will use in considering the relevant action; and
- (c) may invite comments from other interested parties or the public.

(4) If the Regulator amends or revokes a licence pursuant to this section, the Regulator shall provide the licensee with reasonable time to comply with the amendment or revocation.

(5) Where a licence is revoked the Regulator shall take into account continuity of service to customers and include in the revocation order such terms and conditions as the Regulator deems appropriate.

(6) Further procedures related to the amendment or revocation of a licence may be set out in rules or orders.

19. Term and Renewal-(1) The term of a licence shall be stated in the licence.

(2) Subject to subsection (3), upon application of the licensee, a licence shall be renewed by the Regulator on the same conditions.

(3) The Regulator may renew a licence on new conditions or deny the renewal of a licence if:

- (a) the licence has been in breach of one or more material licence conditions, or this Act, or a regulation, rule or order made under this Act; or
- (b) changes to:
 - (i) any international treaty to which Samoa is a party; or
 - (ii) any commitment or recommendation or standards applicable to the Government or Samoa; or
 - (iii) any applicable law, require a renewal on new conditions or denial of a renewal, as the case may require; or
- (c) the Regulator decides that a renewal on new conditions or the denial of a renewal is required to implement this Act in a manner consistent with the objectives listed in section 3.

PART IV

UNIVERSAL ACCESS

20. Universal Access Policy-(1) The Regulator may propose, and the Minister may approve, a policy setting out specific objectives and related principles and service obligations relating to the provision of universal access to telecommunications services in Samoa.

(2) The Minister may establish an advisory body, in accordance with Part VI of the Ministry of Communications and Information Technology Act 2005, to advise the Regulator and the Minister on the preparation of a universal access policy.

(3) In preparing a universal access policy, the Regulator shall consider:

- (a) the objectives for the development of universal access;

- (b) the basic telecommunications services to be included in universal access obligations;
 - (c) the geographical areas in which specified levels of universal access should be achieved; and
 - (d) the costs of the universal access service obligations.
- (4) In preparing a universal access policy, the Regulator shall ensure that any universal access obligations of service providers:
- (a) are administered in a transparent, non-discriminatory and competitively neutral manner; and
 - (b) are not more burdensome than necessary for the universal access objectives to be achieved.
- (5) The Regulator shall consult with interested parties when preparing a universal access policy.
- (6) Part III of the Public Bodies (Performance and Accountability) Act 2001 relating to Community Service Obligations shall not apply to Part IV of this Act

21. Universal Access Fund-(1) Following approval of a universal access policy, the Minister, by notice in writing, may establish a Universal Access Fund to be used to subsidize the net costs of providing universal access.

(2) A Universal Access Fund established under this section shall be administered by the Regulator and in accordance with any financial and administrative directions issued in writing by the Chief Executive Officer of the Ministry of Finance.

(3) The Universal Access Fund shall be operated out of a separate account from the Ministry or the operational accounts of the Regulator.

(4) Subject to subsection (5), where the Minister has established a Universal Access Fund under subsection (1), the Minister, by notice in writing from time to time, shall:

- (a) Require all licencees to contribute to the Fund; and
- (b) Determine the contribution obligations of licencees and the disbursement procedures of the Fund.

(5) The disbursement procedures of the Universal Access Fund shall be competitively neutral and market-oriented.

PART V
RADIO SPECTRUM MANAGEMENT

22. Spectrum Management Functions-(1) The Regulator shall be responsible for the orderly and efficient management, allocation and assignment of frequencies in the radio spectrum.

(2) In relation to radio spectrum management, the Regulator shall:

- (a) advise the Minister on matters relating to the use or management of the radio spectrum;
- (b) conduct public inquiries relating to the use or management of radio spectrum, where the Regulator determines such inquiries to be necessary or useful for the Regulator's management of the radio spectrum;
- (c) prepare and publish a national radio spectrum plan and any other required radio spectrum plans, frequency band plans, marketing plans and plans for the migration of spectrum users to different bands;
- (d) ensure that the use of the radio spectrum is consistent with any applicable international treaties, commitments, protocols and standards;
- (e) intervene in and resolve interference disputes, where such disputes are not resolved by the disputing parties to the satisfaction of the Regulator;
- (f) make advisory guidelines relating to the use of radio spectrum, where the Regulator determines such guidelines to be necessary or useful for the Regulator's management of the radio spectrum;
- (g) issue radio spectrum licences to authorize persons to use the radio spectrum and make transmissions by radio;
- (h) administer matters related to radio spectrum fees, including fees established by regulation under section 10;
- (i) determine, allocate and assign frequency bands or any other matters relating to the transmission of

radio communications (whether by satellite, terrestrial or other transmissions); and

- (j) perform such other radio spectrum-related functions as are conferred on the Regulator by another Act or by a regulation or rule.

23. Radio Spectrum Regulation-(1) The Regulator shall develop a rule to implement an efficient approach to management of the radio spectrum in Samoa. this rule may provide, among other things:

- (a) classes or other types of radio spectrum and radio equipment;
 - (b) requirements for radio spectrum licences authorizing the use of the radio spectrum;
 - (c) requirements for authorization for the use of radio apparatus;
 - (d) technical requirements and standards in relation to radio equipment, interference-causing equipment and radio-sensitive equipment; and
 - (e) procedures, conditions and restrictions applicable to the use of the radio spectrum and radio equipment.
- (2) The rules under subsection (1) shall be binding on all users of the radio spectrum or radio apparatus in Samoa.

24. Interference Disputes and Coordination-(1) In resolving radio spectrum interference disputes, the Regulator may:

- (a) appoint an arbitrator to settle the dispute in accordance with the provisions of the Arbitration Act 1976;
 - (b) assign staff or technical experts retained by the Regulator to mediate the dispute, and failing successful mediation, to report to the Regulator on possible resolutions of the dispute; or
 - (c) issue an order to resolve the dispute, with or without receipt of a report pursuant to paragraph (b).
- (2) The Regulator shall consult with and coordinate the use of the radio spectrum with other countries, international users

and international organizations, such as the International Telecommunications Union, as required by law or treaty in force or as otherwise determined by the Regulator.

PART VI

COMPETITION POLICY

25. Functions and Duties of Regulator Regarding Competition-(1) The Regulator shall perform the following functions and duties in relation to competition among service providers in telecommunications markets in Samoa:

- (a) promote efficient and sustainable competition for the benefit of end-users;
 - (b) establish an open and transparent regulatory framework that minimizes regulatory and other barriers to entry into telecommunications markets;
 - (c) make orders defining markets and relevant markets for the purpose of this Act;
 - (d) make orders designating dominant service providers in relevant markets in Samoa, based on their market share and other factors as determined in accordance with section 26;
 - (e) monitor and prevent abuses of a service provider's dominant position, pursuant to section 27;
 - (f) monitor and prevent practices that would restrict competition, in accordance with section 28;
 - (g) review and decide upon proposed transfers of control of service providers, in accordance with section 31;
 - (h) undertake market reviews from time to time to evaluate market conditions and the state of competition in those markets; and
 - (i) dispose of complaints and resolve disputes related to anti-competitive practices in a timely and impartial manner.
- (2) Wherever a conflict arises between the provisions of this Act and the provisions of any other legislation regulating

competition in telecommunications markets in Samoa, including but not limited to the Fair Trading Act 1998, the provisions of this Part shall prevail.

(3) The Regulator may issue an order that authorizes a person to provide a telecommunications service and to construct and operate telecommunications facilities, notwithstanding that a service provider has been granted exclusive rights by licence, agreement or other wise, to engage in such service provision, construction or operation, provided that:

(a) the Regulator has given the service provider with exclusive rights notice of:

(i) the Regulator's intention to issue an order under this subsection; and

(ii) at least 21 days to comment before such an order is made; and

(b) after taking into account any comments received under paragraph (a), the Regulator has made an order that the service provider with exclusive rights has unreasonably failed or refused to provide such services, or to construct and operate such facilities.

26. Designation of Dominant Service Providers-(1) Every service provider whose gross revenues in a specific telecommunications market constitutes forty per cent (40%) or more of the total gross revenues of all service providers in that market, shall be designated a dominant service provider in that market, unless and until the Regulator specifies otherwise in an order.

(2) The Regulator may designate a service provider with less than forty per cent (40%) of the total gross revenues in a specific telecommunications market as a dominant service provider if, either individually or acting together with others, the service provider enjoys a position of economic strength affording it the power to behave to an appreciable extent independently of competitors or customers.

(3) The Regulator shall post and maintain on its official web site a current list of all dominant service providers

specifying the markets in which such providers have been designated to be dominant.

(4) Orders designating dominant service providers shall specify and define the relevant markets for which a service provider is designated to be dominant and the circumstances relied on by the Regulator to support any findings regarding dominance.

27. Abuse of Dominance-A dominant service provider is prohibited from undertaking activities or actions that abuse the service provider's dominant position, and for the purposes of this section the following types of actions and activities shall be considered an abuse of dominant position:

- (a) failing to supply essential facilities to a competitor within a reasonable time after a request and on reasonable conditions, or discriminating in the provision of interconnection or other telecommunications service providers; except under circumstances that are objectively justified based on differences in supply conditions, including different costs or a shortage of available facilities or resources;
- (b) bundling of telecommunications services, whereby the service provider requires, as a condition of supplying a service to a competitor, that the competitor does not require;
- (c) offering a competitor more favourable terms or conditions that are not justified by cost differences if the competitor acquired another service that the competitor does not require;
- (d) pre-emptively acquiring or securing scarce facilities or resources, including but not limited to rights of way, required by another service provider for the operation of such service provider's business, with the effect of denying the use of the facilities or resources to such service provider;
- (e) supplying competitive telecommunications services at prices below long run average incremental

costs or such other cost standard as may be established by the Regulator;

- (f) using revenues or the allocation of costs from one telecommunications service to cross-subsidize a competitive telecommunications service with the objective of lessening competition, except where such cross subsidy is specifically approved by order of the Regulator or by approval of tariffs for relevant telecommunications services;
- (g) failing to comply with the interconnection obligations of a dominant service provider specified in Part VII of this Act;
- (h) performing any of the following actions, where such actions have the effect of impeding or preventing a competitor's entry into, or expansion in, a market:
 - (i) deliberately reducing the margin of profit available to a competitor that requires wholesale telecommunications services from the dominant service provider, by increasing the prices for the wholesale telecommunications services required by that competitor, or decreasing the prices of the retail telecommunications services in markets where they compete, or both;
 - (ii) requiring or inducing a supplier to refrain from selling to a competitor;
 - (iii) adopting technical specifications for networks or systems to deliberately prevent interoperability with a network or system of a competitor;
 - (iv) failing to make available to other service providers on a timely basis technical specifications, information about essential facilities or other commercially relevant information which is required by such other service providers to provide telecommunications services and which is not available from other sources; and

- (v) using information obtained from competitors for purposes related to interconnection of supply of telecommunications services by the dominant service provider to compete with such competitors;
- (i) any other action or activity engaged in by a dominant service provider that the Regulator determines in accordance with section 29 to have the effect, or likely to have the effect, of materially restricting or distorting competition in a telecommunications market

28. Other Anti-Competitive Practices-No person shall engage in a practice restricting or distorting competition in telecommunications markets, including the following:

- (a) arrangements between two or more service providers that directly or indirectly fix the prices or other terms or conditions of telecommunications services in telecommunications markets;
- (b) arrangements between two or more service providers that directly or indirectly determine which person will win a contract or business opportunity in a telecommunications market; and
- (c) arrangements between two or more service providers to apportion, share or allocate telecommunications markets among themselves or other service providers.

29. Determination of Abuse of Dominance and Anti-Competitive Practices-The Regulator may, on application by any person, or on the Regulator's own initiative, determine:

- (a) whether or not the actions or activities of a dominant service provider constitute an abuse of the dominant service provider's dominant portion within the meaning of section 27;
- (b) whether or not the actions or activities of any service provider amount to an anti-competitive practice within the meaning of section 28; and

- (c) that an action or activity of a service provider under sections 27 or 28 are authorized and shall not be considered to contravene this Act, on the grounds that such actions or activities are in the public interest and are otherwise consistent with the objectives set out in section 3.

30. Remedies for Abuse of Dominance and Anti-Competitive Practices-(1) If the Regulator determines that the actions or activities of a service provider constitute an abuse of the service provider's dominant position or an anti-competitive practice within the meaning of this Act or a regulation or rule, the Regulator may issue an order to:

- (a) require one or more persons named in the order to take one or more of the following actions:
 - (i) cease the actions or activities specified in the order immediately, or at such time specified in the order, and subject to such conditions specified in the order;
 - (ii) make specific changes in actions or activities specified in the order, as a means of eliminating or reducing the abusive or anti-competitive impact; and/or
- (b) impose a financial surcharge not exceeding SAT\$100,000 on a service provider whose actions constitute:
 - (i) an abuse of the service provider's dominant position; or
 - (ii) an anti-competitive practice; and/or
- (c) require the service provider involved in the abusive action or activity or anti-competitive practice and any persons affected by such action, activity or practice to meet and attempt to determine remedies to prevent or eliminate continuation of such action, activity or practice, and to resolve any remaining dispute; and/or
- (d) require the service provider responsible for the abusive or anti-competitive action or activity specified in the order to publish an

acknowledgement and apology for such action, activity or practice in Samoan and English in the Savali and one other newspaper circulating in Samoa, in such a form and at such time as the Regulator specifies in the order; and/or

- (e) require the service provider to provide periodic reports to the Regulator to assist in determining whether the action or activity is continuing and to determine their impact on telecommunications markets, competitors and customers.

(2) A financial surcharge imposed under subsection (1)(b) shall be payable to the Treasury Fund.

(3) For the purpose of removal of doubt, the Regulator may revoke a licence where a licensee fails to pay a financial surcharge imposed under subsection (1)(b).

31. Transfers of Control of Service Providers-(1) Subject to this section, no approvals shall be required for the transfer of control of a service provider.

(2) No transfer of control of a service provider shall be effected without the prior approval of the Regulator if:

- (a) a dominant service provider or an affiliate of a dominant service provider is:

- (i) the person ultimately acquiring control of the service provider; or

- (ii) the person whose control is being transferred; or

- (b) as a result of the transfer, a person, alone or with affiliates, would control service providers whose gross revenues in a specific telecommunications market constitutes forty per cent (40%) or more of the total gross revenues of all service providers in that market.

(3) No transfer of control that requires approval under subsection (2) shall be completed or have any legal force or effect unless the person applying for approval of the transfer has received written approval for the transfer from the Regulator.

(4) Applications for transfers of control that require approval under subsection (2) shall include such information on

the proposed transfer transaction as the Regulator may require. Such information shall, at a minimum, include:

- (a) the identification of all persons involved in the transfer transaction, including buyers and sellers, their shareholders and affiliated companies, and any other persons that have a greater than five per cent (5%) ownership interest in all such persons;
 - (b) a description of the nature of the transaction and a summary of its commercial terms;
 - (c) financial information on the persons involved in the transaction, including their annual revenues from telecommunications markets, identified by specific markets, value of assets devoted to telecommunications business and copies of any recent annual or quarterly financial reports; and
 - (d) a description of the relevant telecommunications markets in which the persons involved in the transaction operate.
- (5) The Regulator may request additional information regarding an application for a transfer of control that requires approval under subsection (2) at any time.
- (6) Subsection to subsection (7), within ninety (90) days of receipt of a duly completed application for a transfer of control that requires approval under subsection (2), the Regulator shall:
- (a) approve the transfer of control without conditions; or
 - (b) approve the transfer of control with such conditions as are reasonably related to promotion the development of open and competitive telecommunications markets in Samoa and maximizing the benefits of the transaction for telecommunications customers; or
 - (c) deny the transfer of control; or
 - (d) issue a notice initiating an investigation of the proposed transfer of control, and following such investigation the Regulator shall take one of the actions set out in paragraphs (a), (b) and (c).

(7) The Regulator shall only deny a transfer of control or attach conditions to a transfer of control under this section if the Regulator determines, acting reasonably, that the transfer would have serious anti-competitive effects which would outweigh any positive effects for telecommunications customers.

PART VII

INTERCONNECTION

32. Functions and Duties of the Regulator Regarding Interconnection-The Regulator shall perform the following functions and duties in relation to interconnection of telecommunications networks:

- (a) promote adequate, efficient and cost-oriented interconnection of telecommunications networks and access by service providers to telecommunications facilities of other service providers, in order to permit interoperability of telecommunications services that originate or terminate in Samoa and to promote the development of competitive telecommunications service market;
- (b) establish an open, non-discriminatory and commercially viable regulatory framework for interconnection and access with a view to minimizing regulatory and other barriers to entry into telecommunication markets;
- (c) promote interconnection arrangements, including by facilitating negotiations between parties to reach interconnection agreements;
- (d) ensure that interconnection agreements otherwise meet the objectives of this Act;
- (e) determine which service providers are dominant service providers in a telecommunications market for interconnection;
- (f) if considered appropriate by the Regulator, regulate the prices for interconnection and access services by dominant service providers in a telecommunications market for interconnection;

- (g) ensure that dominant service providers in a telecommunications market for interconnection publish a reference interconnection offer in accordance with section 37 of this Act and any regulations, rules and orders applicable to interconnections;
- (h) resolve disputes related to interconnection in a timely and impartial manner; and
- (i) make orders specifying the terms of interconnection that shall be provided by one or more service providers, including direct, indirect and virtual interconnection arrangements.

33. Interconnection by All Service Providers-(1) Upon receipt of a written request by another service provider, a service provider shall enter into good faith negotiations to enter into an interconnection agreement to:

- (a) connect and keep connected the telecommunications networks of both service providers; and
- (b) provide access to such telecommunications facilities, including but not limited to central offices and other switching equipment locations, mast sites, towers, poles, subscriber access lines and underground facilities, as are reasonably requested in order for the service providers to provide telecommunications to their customers. any co-location of facilities shall also be subject to section 68.

(2) The Following actions or practices shall be deemed to violate the duty in subsection (1) to negotiate in good faith:

- (a) obstructing or delaying negotiations, or failing to make reasonable efforts to resolve outstanding disputes;
- (b) refusing to provide information about a service provider's own telecommunications services or telecommunications network or other facilities that are necessary for the interconnection arrangements;

- (c) misleading or coercing a party into reaching an agreement the party would not otherwise have made;
- (d) interfering in any way with a service provider's ability to communicate with the Regulator, including having a service provider sign a non-disclosure agreement that precludes the service provider from providing information requested by the Regulator; or
- (e) refusing to permit amendment of the interconnection agreement to take into account changes in circumstances, including changes to this Act, a regulation or rule.

(3) Where the Regulator has not made an order otherwise, a service provider shall not be required to enter into an interconnection agreement on terms that would, in the service provider's reasonable opinion:

- (a) cause or be likely to cause material danger, damage or injury to any person or to any property;
- (b) cause material damage or otherwise interfere with the operation of the service provider's facilities or the provision of the service provider's telecommunication services; or
- (c) not be reasonable, having regard to technical or economic constraints.

(4) Service providers and other interested parties may at any time request the Regulator to issue an order that clarifies or interprets the interconnection rights or obligations set out in this Act, a regulation, rule or order.

34. Interconnection by Dominant Service Providers-(1) Sections 35, 36, 37 and 38 apply only to service providers that the Regulator has designated as dominant service providers for interconnection purposes in one or more telecommunications markets.

(2) The Regulator may issue an order to designate a service provider as being a dominant service provider for interconnection purposes in one or more telecommunications markets if the Regulator considers that:

- (a) the service provider is a dominant service provider within the meaning of this Act; or
- (b) the service provider, either individually or jointly with others, enjoys a position equivalent to that of a dominant service provider.

35. Requests for Interconnection-(1) Interconnection arrangements which are offered by dominant service providers designated in accordance with section 34, in addition to meeting the requirements of section 33, shall:

- (a) be consistent with this Act and any rules and orders made by the Regulator before the date of the offer, including any guidelines prescribed therein relating to interconnection charges and quality of service;
- (b) be no less favourable than any reference interconnection offer that has been approved by the Regulator for the service provider;
- (c) meet all reasonable requests for interconnection with the dominant service provider's telecommunications network at any technically feasible point; and
- (d) in all other respects, incorporate reasonable terms and conditions, including technical standards and specifications.

(2) Every dominant service provider designated in accordance with section 34 shall ensure that the dominant service provider:

- (a) applies similar conditions to all interconnecting service providers under similar circumstances;
- (b) provides interconnection to interconnecting service providers under substantially the same conditions and of substantially the same quality as it provides for the dominant service provider's own telecommunications services, or those of the dominant service provider's affiliates;
- (c) makes available on request all necessary or reasonably required information and

specifications to service providers requesting interconnection; and

- (d) only uses information received from a service provider seeking interconnection for the purposes for which such information was supplied and does not disclose the information or otherwise use the information to obtain a competitive advantage.

36. Interconnection Charges-(1) Interconnection charges of dominant service providers designated in accordance with section 34 shall be cost-based. The Regulator may approve a plan to phase in this requirement over time, taking into account the financial impact on the affected dominant services providers.

(2) In establishing charges for interconnection, dominant service providers designated in accordance with section 34 shall comply with any rules or orders applicable to interconnection, including any pricing, costing and cost separation guidelines established by order of the Regulator.

(3) The Regulator may require the interconnection charges of any dominant service provider designated in accordance with section 34 to be approved by the Regulator in advance, including the power to direct such dominant service provider to implement charges determined by the Regulator.

37. Reference Interconnection Offers-(1) Every dominant service provider designated in accordance with section 34 shall:

- (a) prepare a reference interconnection offer for approval by the Regulator within the time period specified by order of the Regulator;
- (b) periodically update the reference interconnection offer as determined by order of the Regulator; and
- (c) publish its approved reference interconnection offer by: